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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,352	01/16/2004	Michael J. Kosmyna	ITW 0008 PA/41038.12/1440	9895
51635	7590	07/14/2005	EXAMINER	
DINSMORE & SHOHL LLP ONE DAYTON CENTRE, ONE SOUTH MAIN STREET SUITE 1300 DAYTON, OH 45402-2023			GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,352

Applicant(s)

KOSMYNA ET AL.

Examiner

Harry A. Grosso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 23,39-41,58 and 62-66 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-38,42-57,59 and 60 is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☒ Claim(s) 61 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/16/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-61, drawn to the fluid supply assembly, classified in class 220, subclass 23.87.
 - II. Claims 62-66, drawn to a method of using the assembly, classified in class 239, subclass 328.

2. Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used with other than fluids, such as granular materials or larger solid, for example, to hold paper clips.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. This application contains claims directed to the following patentably distinct species of the claimed invention: 1) Figure 2

2) Figure 3.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 24 appears generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. During a telephone conversation with Ms. Patricia Prior on May 28, 2005 a provisional election was made with traverse to prosecute the invention of Group I and Species 1, claims 1-61. Affirmation of this election must be made by applicant in

replying to this Office action. In examination of the application the examiner deemed claims 23, 39-41 and 58 to read on the non-elected Species 2 and they are withdrawn from further consideration by the examiner, 37 CFR 1.142(b).

Drawings

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the removal tab on the disposable cup (claims 5 and 48), the upper end of the side wall connected to the flange by a flat annular portion (claims 10 and 54), the removal tab on the disposable lid (claims 21 and 49), the clear sheet having indicia (claim 59) and the second downwardly extending projection (claim 61) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 61 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 61 is a dependent claim but it is unclear what claim it depends from, therefore it has not been further examined.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3, 4, 6, 7, 10, 13, 15-18, 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Pittman (6,053,314).

11. Regarding claim 1, Pittman discloses a cup with an open end, a closed end and a flange extending outward and downward (Figure 2, column 2, lines 52-54).

12. Regarding claim 3, Pittman discloses the cup is made of a polymeric material (plastic, column 2, lines 32-33) and examiner maintains the cup is substantially

transparent in order for the indicia on the side of the cup to be used to judge the volume of the contents.

13. Regarding claim 4, Pittman discloses the cup has indicia (Figure 2).

14. Regarding claim 6, Pittman discloses the sidewall is generally cylindrical (Figure 1).

15. Regarding claim 7, Pittman disclosed the distance across the outlet end is greater than the distance across the bottom (column 2, lines 45-49).

16. Regarding claim 10, Pittman discloses the flange is connected to the upper end of the sidewall by a flat annular portion (24, Figure 2).

17. Regarding claim 13, Pittman discloses a lid (Figures 1 and 2) with inner and outer portions, the outer portion being generally frustoconical and having an angle substantially the same as the flange of a cup, mating with the cup and having a fitting (50, 52) integrally connected to the inner portion and having a hole (56).

18. Regarding claim 15, Pittman discloses the lid is made of a polymeric material (plastic, column 2, lines 32-33) and the examiner maintains that the lid would be substantially transparent, translucent or opaque.

19. Regarding claim 16, Pittman discloses a downward extending rib that mates with an inside side wall of the cup (Figures 1-3).

20. Regarding claim 17, Pittman discloses a sealing bead adapted to contact the flange of the cup (44, Figure 2, column 2, line 67 to column 3, line 5).

21. Regarding claims 18 and 20, Pittman discloses a plug (60) to close the fitting on the outside of the fitting.

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22. Regarding claim 22, Pittman discloses a frustoconical inner portion of the lid (52).

23. Claims 1, 3, 6, 7, 9, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams (6,718,644).

24. Regarding claim 1, Williams discloses a cup with an open end, a closed end and a flange extending outward and downward (Figures 1, 2, 9, 10, 16).

25. Regarding claim 3, Williams discloses that the cup is made of a polymeric material (column 3, lines 47-49) and the examiner maintains that the cup is inherently capable of being substantially transparent.

26. Regarding claim 6, Williams discloses cups that are generally cylindrical.

27. Regarding claim 7, Williams discloses the distance across the outlet end is greater than the distance across the bottom (Figures 1, 2, 9, 10, 16).

28. Regarding claim 9, Williams discloses a cup with a generally cylindrical lower side wall a generally frustoconical intermediate side wall and a generally cylindrical upper side wall (Figures 10 and 12).

29. Regarding claim 10, Williams discloses the upper end of the side wall is connected to the flange by a flat annular portion (38, 138, 238).

30. Regarding claim 12, Williams discloses a cup with a generally cylindrical lower sidewall portion, a generally cylindrical upper side wall portion and an intermediate portion (Figure 16).

Claim Rejections - 35 USC § 103

31. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

32. Claims 2 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pittman. It would have been an obvious matter of design choice to have the angle of the cup flange and lid edge in the range of about 10 degrees to about 70 degrees. The size of the range indicates the angle lacks criticality and applicant has not disclosed that the angle used solves any stated problem or is for any particular purpose. Pittman does not disclose the angle of the flange or lid edge but they appear to fall within the given range and it appears that the invention would perform equally well with the flange and lid edge angle of Pittman.

33. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams.

34. Regarding claims 8 and 11, it would have been an obvious matter of design choice to provide a cup with a generally cylindrical lower side wall and a generally frustoconical upper side wall or a generally elliptical lower side wall and a generally cylindrical upper side wall. Applicant has not disclosed that the specific shape of the cup solves any problem or is for any particular purpose. The variety of cup shapes disclosed by applicant indicates the specific shape lacks criticality and it appears the invention would work equally well with any known cup shape such as those disclosed by Williams.

35. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pittman or Williams in view of Ueda et al (4,634,003). Pittman and Williams both disclose the cup of claim 1 but neither teaches the use of a removal tab on the cup. Ueda et al

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discloses the use of a removal tab on a cup (6, Figures 1, 3 and 6) to facilitate removal of the cup from within another container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the removal tab as disclosed by Ueda et al in the cup disclosed by Pittman or Williams to facilitate removal of the cup from within another container.

36. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pittman in view of Stewart et al (2002/0175171, November 28, 2002). Pittman discloses the lid of claim 13 but does not teach the use of a removal tab on the lid. Stewart et al discloses a removal tab on a lid (Figure 1) to facilitate removal of the lid from a container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a removal tab as disclosed by Stewart et al in the lid disclosed by Pittman to facilitate removal of the lid from a container.

37. Claims 13, 18, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giraud in view of Pittman. Giraud discloses a lid (Figures 2 and 3) with inner and outer portions, the outer portion being generally frustoconical and having an edge with frustoconical angle (18), an inner portion of the lid that is frustoconical (24) and a fitting 20 that is closed by a plug (52, column 4 lines 1-15) that goes inside the fitting. Giraud does not teach the use of a cup having a flange angled to mate with the edge of the lid. Pittman discloses a cup with a flange having an angle substantially the same as the edge angle of a lid to provide for a tight fit. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated

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the use of a cup with a flange having an angle substantially the same as the edge angle of a lid as disclosed by Pittman with the lid disclosed by Giraud to provide a cup and lid with a tight fit.

Allowable Subject Matter

38. Claims 24-38, 42- 57, 59 and 60 are allowed.

Conclusion

39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Joseph et al (6,820,824 and Rothrum et al (6,588,681) discloses fluid supply assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan Newhouse
Supervisory Patent Examiner
Art Unit 3727

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